

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

WILLIAM STEFANIAK and *
JANICE STEFANIAK, *
Plaintiffs, *

CIVIL ACTION NO. 05-11465-MLW

v. *

VOYAGER III, LLC, *
WATER TRANSPORTATION *
ALTERNATIVES, INC., *
Defendants. *

PLAINTIFFS' EMERGENCY MOTION TO INSPECT AND PHOTOGRAPH

Plaintiffs request this court to endorse the attached Order (Exhibit A) authorizing the inspection and photographing of the M/V VOYAGER III ("vessel") which is owned and/or controlled by the Defendants Voyager III, LLC and/or Water Transportation Alternatives, Inc. and located in Boston, Massachusetts. Plaintiffs request that they be permitted to inspect and photograph the following areas on or before November 30, 2006:

- A. The vessel's exterior port, starboard and bow from different angles and that the defense provide the means to take these photographs (i.e. platform or vessel). In the alternative, if the defense has stock photography of the vessel's exterior hull that accurately reflects the condition and rail arrangement that existed on July 14, 2004, Plaintiffs would accept that in lieu of the inspection and photography proposed in this subsection; and

- B. The weather deck of the vessel including every interior and exterior area superior thereto including the equipment located thereon and specifically the port bow upon which the Plaintiff was injured. For the sake of clarity, Plaintiffs ask that this court kindly refer to the areas circled in red in the photograph *infra*.

Want to see where we keep the really big animals?

Welcome aboard the Voyager III! Enjoy the view as this high-speed catamaran whisks you safely to the whale feeding grounds just 30 miles east of Boston, where you'll glimpse the largest animals to ever live on Earth. Our destination is Stellwagen Bank, a busy feeding area for whales, dolphins, sea birds and other marine life. Interact with our naturalists to learn how they collect information on whales. Experience the hands-on navigation station. View the captain in action on the bridge.

Guaranteed Whale Sightings!
On this fun family voyage, whale sightings are guaranteed! In the rare event we do not see any whales, passengers will receive a complimentary New England Aquarium Whale Watch ticket. New England Aquarium is one of the leading marine conservation organizations in the world — let us show you what experience offers!

Reservations:
617-973-5281
Online information and ticket purchase:
newenglandaquarium.org

New England Aquarium Whale Watch is operated by Water Transportation Alternatives Inc. The captain reserves the right to cancel any trip for weather or sea conditions. If the vessel leaves the dock, but the trip is subsequently cancelled, paying passengers will be given a complimentary whale watch ticket to use at a later date. Schedule and prices are subject to change without notice. Vessel destinations may vary due to whale locations.

In support of his motion, the plaintiff states as follows:

1. The immediate inspection and photographing of the vessel is essential to Plaintiffs' preparation for the December 13, 2006 depositions of the Defendants and the ultimate trial of this matter. Further, though not yet decided, Plaintiffs are entertaining the possibility of creating computer-generated animation for use at trial. This animation requires very specific

photographs of the vessel as a whole and various line-of-sight angles of the port bow where Plaintiff, William Stefaniak, was injured.

2. Plaintiffs' request to inspect and photograph is well within the court ordered March 31, 2007 discovery deadline.
3. Plaintiff discussed the availability of dates for such an inspection with the defense on three prior occasions by phone in early June 2006 and, in deference to the Defendants' "season", agreed to postpone the inspection and photography until "Fall." To date, Plaintiffs have not received dates that the defense will make the vessel available and now seeks this court's assistance.
4. On June 26, 2006, Defendants make reference to the discussions claimed *supra* in their response to Plaintiff's Request for Production No. 3, that "[The nautical chart used at the time of the incident] will be made available to the plaintiff during the vessel's onboard inspection." See Response No. 3 attached as Exhibit 6 to Plaintiffs' Motion to Compel, Document No. 16 (emphasis added).
5. Plaintiffs' request is reasonable since all counsel are located in Boston and the vessel is berthed at the Central Pier near the New England Aquarium, also in Boston. In addition, Plaintiffs are only requesting one hour and are willing to reasonably accommodate the vessel's schedule.

Plaintiffs request that this court endorse the attached Order authorizing the inspection and photographing of the M/V VOYAGER III as described in subsections A and B *supra* and that such inspection and photographing be ordered to take place on or before November 30, 2006.

PLAINTIFFS' LOCAL RULE 7.1(A)(2) CERTIFICATION

I, David B. Kaplan, counsel for the Plaintiffs in the above entitled matter, state that counsel had conferred in June 2006 and more recently by email with regard to the subject matter of this Motion in a good faith attempt to obtain concurrence in the relief sought.

Respectfully submitted,
WILLIAM STEFANIAK and
JANICE STEFANIAK
By their attorney,

/s/ David B. Kaplan
DAVID B. KAPLAN, B.B.O. No. 258540
THE KAPLAN/BOND GROUP
88 Black Falcon Avenue, Suite 301
Boston, MA 02210
(617) 261-0080

I hereby certify that a true copy of the above document was served upon each attorney of record by ECF on November 17, 2006.

/s/ David B. Kaplan

Dated: November 17, 2006

Exhibit A

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

William Stefaniak, et. al.

v.

CIVIL ACTION NO. 05-11465-MLW

Voyager III, LLC, et. al.

O R D E R

Plaintiff's Emergency Motion to Inspect and Photograph the
M/V VOYAGER III at Boston, Massachusetts is allowed. The
requested inspection shall be conducted on or before
November 30, 2006.

SO ORDERED.

Chief Judge Mark L. Wolf

Date: _____